

312 NLRB No. 75

**Nestle' Dairies, a Division of Nestle' Dairy Systems, Inc. and General Teamsters and Food Processing Local Union No. 87, International Brotherhood of Teamsters, International Union of Operating Engineers, Local 501, AFL-CIO. Case 31-CA-19982**

**CORRECTION**

On September 24, 1993, the National Labor Relations Board issued a Decision and Order in the above-captioned proceeding.

In section II,A, paragraph 1, please change the election date to March 13, 1992, not 1993.

Dated: September 30, 1993

**Nestle' Dairies, a Division of Nestle' Dairy Systems, Inc. and General Teamsters and Food Processing Local Union No. 87, International Brotherhood of Teamsters, International Union of Operating Engineers, Local 501, AFL-CIO. Case 31-CA-19982**

## DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND RAUDABAUGH

On June 30, 1993, the General Counsel of the National Labor Relations Board issued a complaint alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Joint Petitioner Unions' (the Unions) request to bargain following the Unions' certification in Case 31-RC-6878. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed its answer admitting in part and denying in part the allegations in the complaint.

On August 23, 1993, the General Counsel filed a Motion for Summary Judgment. On August 27, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Charging Party joined in the General Counsel's motion and the Respondent filed a response to the notice.<sup>1</sup>

### Ruling on Motion for Summary Judgment

In its answer the Respondent admits its refusal to bargain but attacks the validity of the certification on the basis of its objections to the election in the representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

<sup>1</sup> The Respondent's request that the record be supplemented by the inclusion of certain documents filed in connection with the underlying representation case is granted.

## FINDINGS OF FACT

### I. JURISDICTION

The Respondent is now, and has been at all times material, a corporation duly organized under and existing by virtue of the laws of the State of Delaware, with an office and place of business located in Bakersfield, California, where it is engaged in the production of ice cream.

The Respondent, in the course and conduct of its business operations, annually sells and ships goods or services valued in excess of \$50,000 directly to customers located outside the State of California. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that Locals 87 and 501 are labor organizations within the meaning of Section 2(5) of the Act.

### II. ALLEGED UNFAIR LABOR PRACTICES

#### A. The Certification

Following the election held March 13, 1993<sup>2</sup>, the Unions were certified on May 28, 1993, as the collective-bargaining representatives of the employees in the following appropriate unit:

Included: All production and maintenance employees employed by Respondent at its Bakersfield, California facility.

Excluded: Office clerical employees, professional employees, guards, and supervisors as defined in the Act.

The Unions continue to be the exclusive representatives under Section 9(a) of the Act.

#### B. Refusal to Bargain

Since June 7, 1993, the Unions have requested the Respondent to bargain and since June 14, 1993, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

### CONCLUSION OF LAW

By refusing on and after June 14, 1993, to bargain with the Unions as the exclusive collective-bargaining representatives of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

### REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the

Unions, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Unions. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

#### ORDER

The National Labor Relations Board orders that the Respondent, Nestle' Dairies, a Division of Nestle' Dairy Systems, Inc., Bakersfield, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with General Teamsters and Food Processing Local Union No. 87, International Brotherhood of Teamsters, International Union of Operating Engineers, Local 501, AFL-CIO (the Unions), as the exclusive bargaining representatives of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Unions as the exclusive representatives of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

Included: All production and maintenance employees employed by Respondent at its Bakersfield, California facility.

Excluded: Office clerical employees, professional employees, guards, and supervisors as defined in the Act.

(b) Post at its facility in Bakersfield, California, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 31 after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places

<sup>2</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. September 24, 1993

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James M. Stephens, Chairman

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Dennis M. Devaney, Member

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John Neil Raudabaugh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

#### APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with General Teamsters and Food Processing Local Union No. 87, International Brotherhood of Teamsters, International Union of Operating Engineers, Local 501, AFL-CIO (the Unions), as the exclusive representatives of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Unions and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

Included: All production and maintenance employees employed by us at our Bakersfield, California facility.

Excluded: Office clerical employees, professional employees, guards, and supervisors as defined in the Act.

NESTLE'S DAIRIES, A DIVISION OF  
NESTLE' DAIRY SYSTEMS, INC.